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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. [redacted] 120

JONES MOTOR CO., INC., *Petitioner*

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Respondent

and

HIGHWAY EXPRESS LINES, INC. and
MODERN TRANSFER COMPANY, INC.,
Intervening Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CONSTITUTION OF THE UNITED STATES CITED

Article I, Section 8 2

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No.

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PENNSYLVANIA PUBLIC UTILITY COMMISSION,
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HIGHWAY EXPRESS LINES, INC. and
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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

Petitioner, Jones Motor Co., Inc., hereinafter referred to as "Petitioner" or "Jones" respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the opinion and Order of the Superior Court of Pennsylvania affirm-

ing an Order of the Pennsylvania Public Utility Commission, allocatur having been denied by the Supreme Court of Pennsylvania.

OPINIONS BELOW

The per curiam Order of the Supreme Court of Pennsylvania denying Petitioner's petition for allocatur is docketed at No. 123-A Miscellaneous Docket and is reproduced in full text as Appendix I to this Petition. The opinion and Order of the Superior Court of Pennsylvania is reported as Jones Motor Co., Inc. v. Pennsylvania Public Utility Commission, No. 53 March Term, 1959, 188 Pa. Superior Ct. 449, 149 A. 2d 491, and is reproduced in full text as Appendix II to this petition. The Order of Pennsylvania Public Utility Commission in "Pennsylvania Public Utility Commission v. Jones Motor Co., Inc." at C. 16813 is reproduced in full text as Appendix III to this petition.

JURISDICTION

Petitioner seeks review of the opinion and Order of the Superior Court of Pennsylvania filed March 18, 1959, petition for allocatur to the Supreme Court of Pennsylvania having been denied. Jurisdiction of this Court is invoked under Title 28, U.S.C., section 1257(3).

QUESTIONS PRESENTED

(1) May a state agency lawfully issue a cease and desist order on a motor common carrier directing it to cease interstate operations conducted in accordance with the carrier's interstate certificates of public convenience and necessity issued by the Interstate Commerce Commission?

(2) Is a cease and desist order, issued by a state agency, directing cessation of interstate motor common carrier operations authorized by the Interstate Commerce Commission in conflict with Part II of the Interstate Commerce Act and in contravention of the "Commerce clause" of Article I, Section 8 of the Federal Constitution?

(3) Must a state agency, which challenges the operations of a certificated interstate motor common carrier, seek relief from the Interstate Commerce Commission as provided in Section 204(c) of Part II of the Interstate Commerce Act and in accordance with the decision of your Honorable Court in *Service Storage and Transfer Co.* v. *Commonwealth of Virginia*, No. 92 October Term, 1958, decided March 30, 1959?

STATUTES INVOLVED

Interstate Commerce Act, Part II, Section 203(a)(10); Title 49, U.S.C., Section 303(a)(10):

> "The term 'interstate commerce' means commerce between any place in a state and any place in another state or between places in the same state through another state, whether such commerce moves wholly by motor vehicle or partly by motor vehicle or partly by motor vehicle and partly by rail, express, or water."

Interstate Commerce Act, Part II, Section 204(c); Title 49, U.S.C., Section 304(c):

> "Upon complaint in writing to the Commission by any person, State board, organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provisions of this chapter or with any

requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of the opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint."

Interstate Commerce Act, Part II, Section 212(a); Title 49, U.S.C., Section 312(a):

"Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, for willful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: Provided, however, That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 304(c) of this title, commanding obedience to the provision of this chapter, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: And provided further, That the right to engage in transportation in interstate or

foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of sections 306, 309, or 311 of this title, or by virtue of the second proviso of section 306(a) of this title or temporary authority under section 310a of this title, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of sections 311(c), 317(a), or 318(a) of this title or with any lawful order, rule, or regulation of the Commission promulgated thereunder."

Public Utility Law of May 28, 1937, P. L. 1053, Section 202(b) and (c); 66 Purdon's Statutes 1122:

"Upon approval of the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, and not otherwise, it shall be lawful:

(b) For any public utility to renew its charter, or obtain any additional right, power, franchise, or privilege, by any amendment or supplement to its charter, or otherwise.

(c) For any public utility to begin the exercise of any additional right, power, franchise, or privilege."

Interstate Commerce Act, Part II, Section 302(b); Title 49, U.S.C., Section 302(b):

"Nothing in this chapter shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof."

STATEMENT OF THE CASE

The Material Facts

The material facts in the instant matter are as follows: Petitioner has been operating since 1952 under certificates of public convenience and necessity issued by the Interstate Commerce Commission at Dockets MC 4963 and MC 4963, Sub 7, combined in accordance with specific authority granted by the Interstate Commerce Commission in proceedings docketed at MC-F-4955 approving the transfer to Petitioner of its authority at MC 4963, Sub 7. In conducting operations under these certificates, combined as aforesaid, Petitioner has handled traffic moving between Pennsylvania points in its authorized Allentown area, on the one hand, and its authorized Philadelphia area, on the other. In addition, interstate interline traffic to and from other carriers and traffic destined to points on the specified routes, not situated in Pennsylvania, likewise is handled. All traffic is transported pursuant to published interstate routes and published interstate rates. All traffic between the Philadelphia area authorized to Petitioner and the Allentown area authorized to Petitioner is handled via Clinton, New Jersey, the point of combination of the certificated authorities in question.

On August 5, 1957 Pennsylvania Public Utility Commission instituted a complaint proceeding against Petitioner averring operations without a certificate of public convenience and necessity issued by said Commission in violation of Sections 202(b) and 202(c) of the Public Utility Law of Pennsylvania. Both Pennsylvania Public Utility Commission and the Intervenors contended that the traffic handled by Petitioner between the Philadelphia and Allentown areas consti-

tuted intrastate commerce. Petitioner defended on the ground that the transportation was interstate in nature, was performed by it pursuant to its interstate certificates and hence was beyond the jurisdiction of Pennsylvania Public Utility Commission. Pennsylvania Public Utility Commission issued a cease and desist order against Petitioner. Petitioner appealed to the Superior Court of Pennsylvania, which affirmed the Order of Pennsylvania Public Utility Commission. Petitioner then filed a petition for allowance of appeal with the Pennsylvania Supreme Court and said Court denied allocatur.

Petitioner's Contentions

(1) Petitioner has contended and continues to contend that the transportation, which is the subject of this proceeding, is interstate commerce within the purview of Section 203(a)(10), which reads as follows:

> "The term 'interstate commerce' means commerce between any place in a state and any place in another state or between places in the same state through another state, whether such commerce moves wholly by motor vehicle or partly by motor vehicle or partly by motor vehicle and partly by rail, express, or water."

(2) Petitioner's second contention was and is that Pennsylvania Public Utility Commission lacks jurisdiction over the transportation in question. In support of this contention, Petitioner invites attention to the decision of the Interstate Commerce Commission in *Atlantic Freight Lines, Inc.—Petition for Declaratory Order*, MC 77477, 51 M.C.C. 175, wherein the Commission stated:

> ". . . primary jurisdiction to determine the bona fides of interstate transportation is vested in this Commission." (51 M.C.C. 186)

Pennsylvania Superior Court has recognized this contention in *Atlantic Freight Lines, Inc.* v. *Pennsylvania Public Utility Commission,* 163 Pa. Superior Ct. 215, 60 A. 2d 589, when it stated:

> "And when the Interstate Commerce Commission under authority vested in it by Congress has authorized transportation over a stated route, even between two points in the same state, its order designating the movement as interstate commerce is binding on the state and cannot be questioned collaterally. Nevin Bus Lines, Inc., et al. v. Public Service Comm., supra; Cf. United States v. Yohn, D.C., 275 F. 232, affirmed in 2 Cir., 280 F. 511."

(3) Petitioner's third contention was answered by your Honorable Court in *Service Storage and Transfer Co., Inc.* v. *Commonwealth of Virginia,* No. 92 October Term, 1958, decided March 30, 1959, wherein it cited with approval *Castle* v. *Hayes Freight Lines,* 348 U.S. 61, 63-64 (1954):

> "In Castle v. Hayes Freight Lines, 348 U.S. 61, 63-64 (1954), we observed that 'Congress in the Motor Carrier Act adopted a comprehensive plan for regulating the carriage of goods by motor truck in interstate commerce.' We pointed out that 49 U. S. C. § 312 provides 'that all certificates, permits or licenses issued by the Commission "shall remain in effect until suspended or terminated as herein provided" . . . . Under these circumstances, it would be odd if a state could take action amounting to a suspension or revocation of an interstate carrier's commission-granted right to operate.'" (at page 5)

and also stated:

> "Finally, the Commonwealth is not helpless to act. If it believes that petitioner's operation is not bona fide interstate but is merely a subterfuge to escape its jurisdiction, it can avail itself of the remedy Congress has provided in the Act. Section 204(c), supra, note 2, authorizes the filing of a 'complaint in writing to the Commission by any . . . State board . . . (that) any . . . carrier . . .' has abused its certificate. See also Castle v. Hayes Freight Lines, supra. Thus the possibility of a multitude of interpretations of the same federal certificate by several States will be avoided and a uniform administration of the Act achieved." (at page 8)

THE FEDERAL QUESTION WAS RAISED IN TIME AND IN PROPER MANNER

The Federal question was initially raised by Petitioner in its answer to the complaint upon Commission notice which instituted this proceeding. Throughout the conduct of the proceedings before Pennsylvania Public Utility Commission Petitioner continued to raise the Federal question.

In its Order and opinion, Pennsylvania Public Utility Commission, in issuing its cease and desist order, relied upon *Service Storage and Transfer Co., Inc.* v. *Commonwealth of Virginia,* 199 Va. 797, 102 S. E. (2) 339 (1958) and stated:

> "The Supreme Court of Appeals of Virginia recently affirmed a holding of the Virginia Commission that a carrier serving two points within a state does not escape state regulation by following a circuitous route into another state and back again for the purpose of evading such regulation; and that state regulation depends upon whether the

movement is bona fide, of which the test is whether an ordinarily prudent carrier not restrained by regulation would use the interstate route: Virginia v. Service Storage & Transfer Co., 14 PUR (3d) 218 (1956); affirmed sub nom. Service Storage & Transfer Company, Inc. v. Commonwealth of Virginia, 199 Va. 797, 102 S.E. (2) 339 (1956). Applying this test to the instant case, wherein the evidence clearly shows that the 'normal or usual' routes were not followed between the Pennsylvania points, there is no doubt in our minds that the shipments in question are amenable to the jurisdiction of this Commission."

thereby recognizing that a Federal question did exist.

Pennsylvania Public Utility Commission further recognized the existence of a Federal question when it stated:

"Of course, regulation of interstate highway transportation is vested in the Interstate Commerce Commission by the Federal Motor Carrier Act of 1935, 49 U.S.C.A., Section 301, et seq. However, such regulation does not authorize a motor carrier to do an intrastate business on the highways of any state or otherwise interfere with the exclusive exercise of a state's power to regulate intrastate commerce: 49 U.S.C.A., Section 302(b); Ryan, et al. v. Pa. P.U.C., 142 Pa. Superior Ct. 517, 17 A.2d 637, 39 PUR(NS) 455 (1940), allocatur to the Supreme Court refused and certiorari to the United States Supreme Court denied 314 U.S. 640, 62 S. Ct. 80, 86 L. Ed. 514 (1941); Atlantic Freight Lines v. Pa. P.U.C., 163 Pa. Superior Ct. 215, 60 A.2d 589 (1948), allocatur to Supreme Court refused, certiorari denied to the United States Supreme Court 336 U. S. 925, 69 S. Ct. 656, 93 L. Ed. 1087 (1949); Clark v. The Public Service Commission, 209 Md. 121,

120 A.2d 363 (1956); Eichholz v. The Public Service Commission of the State of Missouri, 306 U. S. 268, 59 S. Ct. 532, 83 L. Ed. 641, 27 PUR (NS) 288, rehearing denied 306 U. S. 622, 669, 83 L. Ed. 1063 (1939); and Central Greyhound Lines v. Mealey, 334 U. S. 653, at 660, 68 S. Ct. 1260, 92 L. Ed. 1633 (1947)."

The Federal issues involved were likewise advanced by Petitioner in its argument before the Superior Court of Pennsylvania, wherein the following questions, inter alia, were argued:

"1. Is the transportation here involved interstate commerce?

2. Where operations are conducted pursuant to a valid certificate, issued by the Interstate Commerce Commission, may an instrumentality of a State interfere therewith?

3. Is there any substantial, credible evidence of subterfuge?"

The Superior Court of Pennsylvania also recognized the existence of the Federal question when, in the course of its opinion, it stated:

"Thus the Congress has asserted a hands-off policy by expressly recognizing the power of each State to regulate commerce within its borders. Eicholz v. Public Service Commission, 306 U.S. 268, 59 S. Ct. 532 was a case in which the Commission had revoked Eicholtz' carrier permit on a finding that he had unlawfully engaged in intrastate commerce under the pretense of transacting interstate business. On appeal the District Court from the evidence found that the carriage of property from Missouri into Kansas and thence back into Missouri for delivery there was not 'the normal,

> regular, or usual route for shipping merchandise between the two cities in Missouri: and the court accordingly refused to issue a permanent injunction restraining the State Commission from prosecuting actions against Eicholtz for using State Highways in the transporting of property for hire in interstate commerce. On appeal, the Supreme Court of the United States in affirming the order said: 'We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But in the absence of the exercise of federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests even though interstate commerce is directly affected.'"

and again, when it stated:

> "In this case the evidence was entirely sufficient to support the findings of the Commission that the Interstate Commerce Commission had not assumed jurisdiction of carrier transportation between two points in Pennsylvania, via New Jersey and that the movement by respondent across the State line was but a subterfuge to evade the State's requirements as to intrastate commerce. Atlantic Freight Lines v. Pa. P.U.C., supra. Accordingly, the entry of a cease and desist order was proper in this case."

REASONS SUPPORTING THE GRANT OF THE WRIT

(a) Preliminary Statement

At the time the Superior Court of Pennsylvania handed down its opinion, your Honorable Court had not yet decided *Service Storage & Transfer Co., Inc. v. Commonwealth of Virginia*, supra. A petition in appeal was filed with the Supreme Court of Pennsyl-

vania, also prior to your Honorable Court's decision in the *Service Storage* case.

Immediately upon learning of the decision of the *Service Storage* case, Petitioner filed a supplement to its petition with the Supreme Court of Pennsylvania, attaching a copy of your Honorable Court's opinion and specifically inviting attention thereto.

Notwithstanding the filing of the supplemental petition, the Supreme Court of Pennsylvania refused allocatur in a per curiam Order (Appendix III). While it is recognized that refusal of allocatur or denial of certiorari imports no expression of opinion on the merits of the controversy, *Sunal* v. *Large*, 332 U. S. 174, 181; *House* v. *Mayo*, 324 U. S. 42, 48, it is nevertheless the fact that denial of allocatur in the instant matter deprives Petitioner of a remedy in the Pennsylvania courts, despite the decision of your Honorable Court in *Service Storage & Transfer Co., Inc.* v. *Commonwealth of Virginia*, supra.

(b) The Cases Relied Upon by the Superior Court of Pennsylvania Do Not Support Its Position

In the course of its opinion, the Superior Court of Pennsylvania relied substantially upon *Service Storage & Transfer Co., Inc.* v. *Commonwealth of Virginia*, 199 Va. 797 (1958), 102 S.E. 2d 339; *Eichholz* v. *Public Service Commission*, 306 U. S. 268, 59 S. Ct. 532, and its own decision in *Atlantic Freight Lines, Inc.* v. *Pennsylvania Public Utility Commission*, 163 Pa. Superior Ct. 215, 60 A. 2d 589.

Obviously the reliance upon the decision of the Virginia State Court of Appeals in the *Service Storage* case, which was reversed by your Honorable Court, was

in error. To the extent that the opinion of the Superior Court of Pennsylvania relies thereon, the opinion is in error and should not be allowed to stand.

Reliance on the *Eichholz* case, supra, also constitutes fundamental error for that case was predicated upon facts substantially different from those involved in the instant proceeding.

For example, in the *Eichholz* case the defendant, prior to 1935, received a permit from the Missouri Public Service Commission to operate as a motor carrier of property in interstate commerce. Part II of the Interstate Commerce Act, regulating motor carriers, was passed in 1935 and previous thereto the Federal Government had not subjected interstate motor carriers to regulation. Therefore, such operations properly could be regulated by State agencies.

After passage of Part II of the Interstate Commerce Act, Eichholz applied for a grandfather permit pursuant to Section 209(a)(1) of said Act. It was during the pendency of that application that the Missouri Commission had determined certain of Eichholz's operations to be intrastate in nature. Upon such determination, Eichholtz's Missouri interstate permit was duly withdrawn. On appeal, the action of the Missouri Commission was sustained by your Honorable Court. In the course of the opinion, the jurisdictional question was explained in the following language:

> "When the Commission revoked the permit, the Interstate Commerce Commission had not acted upon appellant's application under the Federal Motor Carrier Act and meanwhile the authority of the state body to take appropriate action under the state law to enforce reasonable reg-

ulations of traffic upon the state highways had not been superseded." (at page 273)

In the instant proceeding, Jones Motor Co., Inc. had interstate operating authority with specific authority from the Interstate Commerce Commission to combine the routes in question. Accordingly, the Interstate Commerce Commission had taken jurisdiction and no question of concurrent jurisdiction could arise.

The events subsequent to the decision of the Superior Court of Pennsylvania in *Atlantic Freight Lines, Inc.* v. *Pennsylvania Public Utility Commission*, supra, render that decision of little value. In the *Atlantic Freight Lines* case, as here, Pennsylvania Public Utility Commission instituted a complaint against the carrier averring that transportation between two Pennsylvania points, via an interstate certificated route, constituted intrastate commerce performed without a Pennsylvania certificate and hence was illegal. There, too, a cease and desist order issued from which Atlantic Freight Lines appealed to the Superior Court of Pennsylvania, which sustained the Commission. There, also, the Supreme Court of Pennsylvania refused allocatur and subsequently your Honorable Court denied certiorari.

Atlantic Freight Lines then filed a Petition for Declaratory Order with the Interstate Commerce Commission in order to ascertain whether the challenged operations were, in fact, authorized by its interstate certificates and constituted interstate commerce. The Interstate Commerce Commission, in *Atlantic Freight Lines, Inc.—Petition for Declaratory Order*, MC 77477, 51 M.C.C. 175, found for Atlantic Freight Lines and in the course of its Order stated:

". . . primary jurisdiction to determine the bona fides of interstate transportation is vested in this Commission" (at 186).

Certain similarities in the *Atlantic Freight Lines, Inc. Declaratory Order* case with the instant matter are considered pertinent:

a. There, as here, the carrier must either disobey the cease and desist order, with risk of arrest and prosecution, or cease operations and risk forfeiture of its interstate certificates under Section 212(a) of Part II of the Interstate Commerce Act (Respondent's Exhibit 1; MC 4963 and MC 4963, Sub 7).

b. There, as here, the interstate certificates authorize service from one Pennsylvania point to another Pennsylvania point by virtue of routes traversing another state.

c. There, as here, the certificates contained the following language preceding the outline of the authority granted:

"IT IS FURTHER ORDERED, That the transportation to be performed by said carrier in interstate or foreign commerce shall be as specified below:

d. In the *Atlantic Freight Lines, Inc. Declaratory Order*, case, supra, the Interstate Commerce Commission indicated that such language:

". . . serves as a factual finding that the operations authorized in the certificates are in interstate or foreign commerce and within our jurisdiction and that we have assumed jurisdiction over, and propose to regulate,

them in accordance with and in furtherance of the purposes of the Interstate Commerce Act." (51 M.C.C. 175, 187)

e. There, as here, the operating route was longer than the most direct route between the Pennsylvania points involved (Printed Record 230a-232a; Original Record 211-214; 51 M.C.C. 175, 179).

f. There, as here, the driving time over the interstate route was greater (Printed Record 230a-232a; Original Record 211-215; 51 M.C.C. 175, 179).

g. There, as here, the carrier charged the appropriate interstate rate (Respondent's Exhibit 5; 51 M.C.C. 175, 179).

h. In the *Atlantic Freight Lines, Inc. Declaratory Order* case the carrier sought a declaratory order to ascertain its right to operate in interstate commerce under its interstate certificates. In the instant proceeding the Interstate Commerce Commission prior to this proceeding authorized the combination of routes in its order at MC-F-4955, wherein the transfer to Petitioner of its authority at MC 4963, Sub 7 was approved (Respondent's Exhibit 3).

The Superior Court of Pennsylvania, though relying on its own decision in the *Atlantic Freight Lines* case, supra, failed completely to mention or to give any consideration to the *Atlantic Freight Lines Declaratory Order* case, supra.

In addition, Superior Court of Pennsylvania apparently did not realize that Pennsylvania Public Utility Commission and Atlantic Freight Lines, Inc. agreed

to a consent decree whereunder Atlantic Freight Lines, Inc. was permitted to operate between two Pennsylvania points via interstate routes of movement. A copy of said consent decree is attached hereto in its entirety as Appendix IV.

The denial of allocatur by the Supreme Court of Pennsylvania fails to give full weight to the decision of your Honorable Court in *Service Storage & Transfer Co., Inc.* v. *Commonwealth of Virginia*, supra, thereby leaving Petitioner without a remedy before the appellate courts of Pennsylvania for the redress of what Petitioner earnestly believes is an erroneous decision.

(c) The Superior Court of Pennsylvania Has Decided a Federal Question Contrary to an Applicable Decision of Your Honorable Court

The effect of the decision by Superior Court of Pennsylvania and the denial of allocatur by Supreme Court of Pennsylvania is contrary to the decision of your Honorable Court in *Service Storage & Transfer Co., Inc.* v. *Commonwealth of Virginia*, supra. In the *Service* case, your Honorable Court indicated that proceedings, such as the instant one, should be brought by the appropriate State agency before the Interstate Commerce Commission pursuant to Section 204(c) of Part II of the Interstate Commerce Act. Obviously this has not been done in the instant proceeding. In the course of the opinion in the *Service Storage* case,

the procedure to be followed was stated in clear and unmistakable terms:

> "It appears clear that interpretations of Federal certificates of this character should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action." (Page 6)

Unless your Honorable Court assumes jurisdiction in the instant matter, Petitioner will continue to be faced by a cease and desist order, which it earnestly believes has been erroneously issued and erroneously sustained by the Superior Court of Pennsylvania. Petitioner has exhausted its remedies before the Pennsylvania appellate courts and now stands without prospect of relief unless certiorari is granted.

CONCLUSION

The commerce involved in this proceeding is interstate commerce within the definition thereof contained in Section 203(a)(10) of Part II of the Interstate Commerce Act, Title 49 U.S.C. 303(a)(10). The Superior Court of Pennsylvania has not given cognizance to that definition but has, in fact, modified that definition and, in so doing, has assumed jurisdiction of interstate commerce over which neither it nor Pennsylvania Public Utility Commission has jurisdiction.

Your Honorable Court should conclude that the action of Pennsylvania Public Utility Commission, as sustained by the Superior Court of Pennsylvania, is in contravention of the Interstate Commerce Act and

the "Commerce clause" of the Constitution of the United States and grant certiorari.

Respectfully submitted,

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